

ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION

FAX COVER SHEET

TO	BOARD SERVICES UNIT COORDINATOR
COMPANY	CALPERS
FAX NUMBER	19167953972
FROM	Larry Watkins
DATE	2023-12-04 19:57:54 GMT
RE	MONROE, RANDY

COVER MESSAGE

REQUEST FOR RECONSIDERATION.
SENT ADDITIONALLY BY US MAIL PRIORITY 12/4/2023

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7 Attorney for Randy Monroe

8 STATE OF CALIFORNIA
 9 STATE PERSONNEL BOARD OF CALIFORNIA

10 RANDY MONROE) Case No. SPB No. 22-0357
 11 APPELLANT) OAH 2023030282
 12)
 13) APPELLANTS RANDY MONROE
 14 V) REQUEST FOR
 15) RECONSIDERATION
 16)
 17 PUBLIC EMPLOYEES'
 18 RETIREMENT SYSTEM)

19 CALIFORNIA DEPARTMENT OF
 20 CORRECTIONS AND
 21 REHABILITATION
 22 (CDCR) RESPONDANT
 23 REAL PARTY IN INTEREST

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1 *State Personnel Board Appeals Division 801 Capitol*
2 *Mall Sacramento, CA 95814*

3 *This guide provides a general overview of the various*
4 *appeals and complaints which may be filed with the*
5 *Appeals Division of the State Personnel Board (SPB).*
6 *This guide does not supersede existing civil service laws*
7 *and rules. Applicable laws and rules governing the SPB,*
8 *and the State Civil Service may be found on SPB's*
9 *website (www.spb.ca.gov). Further, this guide is not*
10 *intended to provide legal advice. All legal questions*
11 *should be directed to union representatives, agency*
12 *legal departments, or private counsel, as appropriate.*

13 **THE STATE PERSONNEL BOARD** *The SPB was*
14 *established in 1934 to administer the civil service*
15 *system and ensure that state employment is based on*
16 *merit and free from political patronage. The SPB's*
17 *authority derives from Article VII, section 3 of the*
18 *California Constitution. The SPB investigates or*
19 *adjudicates appeals and complaints filed by employees,*
20 *applicants, and members of the public alleging*
21 *violations of civil service laws. Laws governing the State*
22 *Civil Service begin in section 18500 of the Government*
23 *Code. SPB's regulations interpreting applicable*
24 *provisions of the Civil Service Act are contained in*
25 *California Code of Regulations, title 2, section 1 through*
 549.95. **APPEALS AND COMPLAINTS FALLING WITHIN**
 THE STATE PERSONNEL BOARD JURISDICTION •
 Adverse Action

 The State Personnel Board was given the sole power to determine
the Merit System which included Appeals of Disciplinary Action. For the
Board to schedule an Appeal Hearing, The Board must timely receive an
appeal. Having received an appeal, the Board begins the process leading
to an appeal hearing. The Board has acted and filed the

1 dismissal from the California State Personnel Board. The California
2 Department of Corrections and Rehabilitation (CDCR) withdrew and
3 dismissed the charges. Much as the Temporary Employee Relations
4 Officer and the ALJ wish to include those charges now or when Randy
5 Monroe gets well and returns to work, those charges cannot be
6 resurrected. They cannot remain in the Personnel File of Randy Monroe
7 because they were dismissed and withdrawn. There is no such thing here
8 as "Dismissed without Prejudice" as in the Courts. And even if there were
9 such a thing, one has to include the "Notice of Intent" in the dismissal
10 document, which was not done.

11 II

12 THE OFFICE OF ADMINISTRATIVE HEARING WAS 13 NOT THE HEARING AGENCY TO DETERMINE THE 14 APPEAL OF DISCIPLINARY ACTION OF RANDY 15 MONROE

16 Cal. Code Regs. tit. 2 § 57.1

17
18 *Section 57.1 - Prehearing/Settlement Conferences*(a) After
19 an evidentiary matter, or any other matter deemed
20 appropriate by the Chief ALJ or his or her designee, has
21 been filed with the Appeals Division, the matter shall be
22 scheduled for a prehearing/settlement conference, unless
23 ordered otherwise.(b) The ALJ at the
24 prehearing/settlement conference shall not preside as the
25 ALJ at the evidentiary hearing unless otherwise stipulated
by the parties.(c) Each Appellant and his or her
representative, and each Respondent and Respondent's
representative, shall appear in person at all
prehearing/settlement conferences. Individually named
Appellants and Respondents must also personally appear

1 Not to be outdone by the late NOAA, A letter dated April 8, 2022,
2 was sent to Randy Monroe telling him the Regional Administrator
3 reviewed the circumstances present at the time of his retirement and
4 determined that Randy retired under unfavorable circumstances. (Note:
5 This letter was also after his retirement). It is also to be noted that during
6 the Settlement Conference it was also determined that Randy Monroe
7 had received his first Retirement Check on April 1, 2022.

8 **(Returning to the Settlement Conference)**

9 At this point after the Attorney for the Department of Corrections
10 and Rehabilitation went offline and returned sometime later, it was
11 verified. The Attorney for the Department of Corrections and
12 Rehabilitation then informed the ALJ that all charges were withdrawn (see
13 Exhibit #1).

14 The Appeal of Randy Monroe is based upon facts while the decision
15 of the ALJ is based on Speculation.

16 III

17 **IN THIS PARTICULAR CASE, PERS and the Office of**
18 **Administrative Hearing committed Reversible Error**
19 **by allowing the Withdrawn and Dismissed**
20 **circumstances to invade their review of the**
21 **Application for Industrial Disability**

22 The Power of CalPERS can be found on their website and that is to
23 determine if an employee of the State Service has sustained a disabling
24 injury that would entitle him to State Disability.

25 *"If you have a disabling injury or illness that prevents
you from performing your usual job duties with your*

1 was made by the California Department of Corrections to dismiss and
2 withdraw all charges without agreement or condition of any kind (see
3 attachment #1).

4 The decision of the Original Hearing ALJ was in Error and did not
5 comport with the evidence presented at the hearing.

6 The Attorney for CalPERS attempted to introduce the circumstances
7 surrounding the charges at the hearing. An objection was immediately
8 lodged by the Attorney for Randy Monroe in opposition to the introduction
9 of any circumstances related to charges that were dismissed and
10 withdrawn. The Administrative Law Judge with the Office of
11 Administrative Hearings denied the objection.

12 The denial was a tenement allowing the Attorney for CalPERS to
13 base her case on the circumstances of the original charges that had been
14 withdrawn and dismissed.

15 The ALJ even included the circumstances in her redaction of the
16 hearing evidence.

17 The decision was based on the charges brought by the Employing
18 agency, The California Department of Corrections and Rehabilitation.

19 The ALJ of the Office of Administrative Hearings had no authority to
20 hear the charges that were withdrawn and dismissed without agreement
21 by Randy Monroe.

22 PERS and OAH are not Superior Authorities to the State Personnel
23 Board. Especially when the only way PERS can refuse to grant Monroe
24 his application is based on the very same withdrawn circumstances.

25 IV

1 **THE ALJ MAKES NEGATIVE REFERENCE TO RANDY**
2 **MONROE NOT BEING ABLE TO RETURN TO WORK ONCE**
3 **THE INDUSTRIAL DISABILITY INJURY IS ABATED.**

4 The ALJ allowed the Parole Agent II Temporary Acting Employee
5 Relations Officer to testify that if Randy Monroe attempts to return to his
6 employment, he would be fired, Objection lodged and Overruled as she
7 was not, a supervisor, Administrator or Regional Authority and certainly
8 had no authority to make such a charge. This person was not even the
9 Return-to-Work Coordinator (**Reversible Error**). **The ALJ heard and**
10 **acted on this testimony in Error.**

11
12 The charges against Randy Monroe were withdrawn and dismissed.
13 There was no language inserted that if Randy Monroe tried to return to
14 employment with the Department of Corrections and Rehabilitations, he
15 would be fired.

16 The fact that Randy Monroe filed his appeal of those charges with
17 the State Personnel Board, and they were adjudicated to the point of
18 withdrawal, Randy Monroe could return to his job with the California
19 Department of Corrections and not face any resurrection of charges,
20 simply because they were withdrawn and dismissed by the State
21 Personnel Board (see Exhibit A).

22 Legally, there existed a very viable argument that since the
23 Department of Corrections and Rehabilitation withdrew and dismissed all
24 charges without any warning or statement of return intent, the
25

1 Department of Corrections and Rehabilitation would be legally prevented
2 from bringing these charges again.

3 The Department of Corrections and Rehabilitation being
4 represented by their lawyer and by their withdrawal and dismissal of all
5 charges would be prevented from appearing before the State Personnel
6 Board as by their dismissal and withdrawal, they effectively, and with
7 finality absolved the State Personnel Board of Jurisdiction (see **EXHIBIT**
8 **B**).

9 Consequently, even if Randy Monroe was to be cured and decide to
10 return to work and even if the Department of Corrections and
11 Rehabilitation managed to bring these same charges, Randy Monroe
12 would retain his right to seek the State Personnel Boards hearing.

13 The ALJ's allowance of this information regarding claimed
14 circumstances was itself **“Reversible Error”** and should not have been
15 allowed in that (**EXHIBIT A**) was an Exhibit at the hearing.

16 This ALJ did not have the authority to rehear or review
17 circumstances of a dismissal and withdrawal of charges without a reason
18 attached to that dismissal/withdrawal that would allow this ALJ to enter
19 into the circumstances of the charges.

20 This ALJ was without authority to hear the charges themselves or
21 comment upon them in her decision based on the naked withdrawal and
22 dismissal that she reviewed at the hearing as Charges no longer existed.

23 Regarding the timeliness of the retirement, the ALJ neglects to
24 mention that it was the **RETURN-TO-WORK COODINATOR** informed
25 Monroe that he had exhausted his time off for his injury that began on

1 **4/19/2019** and needed to retire to continue to receive any money to
2 survive pending his disability retirement. This prompted Monroe to retire
3 while his Industrial Disability was pending.
4

5 **CONCLUSION**

6 The ALJ cannot refer to the charges because once withdrawn
7 without a statement of later intent, they are gone. They cannot be revived.
8 CDCR's Employee Relations Officer believed and testified that if Monroe
9 returned to work, CDCR could revive the charges. This is also patently
10 wrong. If CDCR as a condition of withdrawal, indicated or noticed that if
11 Monroe returned to work, and in consideration of withdrawing the
12 charges, they could be reinstated, this possibly would be a viable
13 argument. The problem is that the Withdrawal and Dismissal of charges
14 carried no conditions and No Agreements (**See Withdrawal Exhibit**).

15 The ALJ was shown that Randy Monroe required several operations
16 within the prior year **DUE TO THE DISABILITY**.

17 It is also a known fact that Randy Monroe was not privy to any
18 serious disciplinary action during the time he was under investigation.
19 The results of Investigations are secret until they are concluded, and a
20 decision made for disciplinary action which is then and only then
21 conveyed to Randy Monroe. So, actually, Randy Monroe had no idea that
22 there was any intention to serve him with a NOAA until 30+ days after he
23 retired.

24 Additionally, CDCR knew Randy Monroe had applied for disability
25 over three months before serving him after he retired.

1 The ALJ mentioned but quickly moved past the document sent to
2 CDCR from Pers asking if Randy Monroe was in good standing. They
3 stated in a timely manner that Randy Monroe was in good standing (see
4 **EXHIBIT C**).

5 In order for this denial to stand, the Board would have to condone a
6 decision based on Speculation without referral to the facts.

7 CDCR and likely the ALJ seem to believe that since CDCR served
8 Monroe with the NOAA (Notice of Adverse Action) after he retired,
9 somehow, this error can be remedied but it cannot. Haywood and its
10 progeny based their cases on the NOAA and the appellants knowledge of
11 having **TIMELY** received the NOAA. All the cases then rely on what the
12 Appellant did after he received the NOAA. In essence, the Board said, "No
13 Cheating". There was none here.

14 CDCR and this ALJ seem to want the Board to make new law
15 eviscerating the NOAA as a condition of disciplinary action and allow the
16 employing department to make up its own reasons for disciplinary action
17 at any time it chooses and ignore dismissal and withdrawal.

18 If this was to be the case, every retired person retiring or having
19 retired from State Service could be served a NOAA at any time after their
20 retirement and be forced to defend charges that may have been brought
21 up months, even years after they retired, thereupon dissolving them of
22 any retirement they receive, had received, or will receive. No one could
23 apply for disability retirement in the year prior to actual retirement
24 because to grant disability retirement with charges known or unknown
25 pending would be fatal to any recovery.

1 A NOAA (Notice of Adverse Action) says you did something while
2 working in State Service and we intend to discipline you for, and this is
3 the discipline we are imposing.

4 Here, they could not do it because Monroe had already retired and
5 applied for his disability and received his first retirement check.

6 CalPERS did their due diligence and sent CDCR a request to give
7 notice of any pending disciplinary action. The Back to Work Officer
8 checked the box stating that Monroe is retiring and applying for disability
9 in "GOOD STANDING".

10 The ALJ says Monroe was sent a letter after he had retired telling
11 him his retirement was "Under Unfavorable Circumstances". This also
12 cannot legally be done after Monroe retired. If the letter was created
13 before and sent before Monroe retired, CDCR might have had an
14 argument, although a losing one but the letter was sent clearly after his
15 retirement and before any NOAA was delivered. In addition, Monroe had
16 already applied for Industrial Disability and the California Department of
17 Corrections had already in 2/1/2022 informed CalPERS in writing that
18 Monroe had no negative pending actions (**SEE ATTACHED EXHIBIT C**).

19 At ALJ paragraph 17, the ALJ writes that on April 12, 2022, after
20 Monroe had retired, the "Return-to-Work Coordinator marked on the Cal
21 Pers Certification form "The member resigned in lieu of termination".
22 Even though this was an outright lie, the form clearly contravenes what
23 the **RETURN-TO-WORK COODINATOR** wrote on the Cal Pers
24 Certification form in March of 2022 that Monroe was in good standing.
25

1 Monroe did not give or send this form to the Return-to-Work Coordinator,
2 **CalPERS DID.**

3 ALJ's paragraph 18, should never have been included in the report
4 because it contained clearly false information to CalPERS by the Assistant
5 Employee Relations Officer who was only an assistant as no true
6 Employee Relations Officer had been hired. This person "Lopez" admitted
7 in the hearing that she was only a Parole Agent II Assistant Supervisor and
8 had no management authority to speak for CDCR or espouse CDCR policy.
9 ALJ's paragraph was proved untrue by the Attorney who represented and
10 signed the Dismissal and Withdrawal of charges.

11 The ALJ reciting of the alleged circumstances of the incident
12 resulting in the charges that were withdrawn and dismissed is little more
13 than an attempt to inflame the reader because the charges were
14 withdrawn and dismissed.

15 These charges were not dismissed by the State Personnel Board but
16 dismissed and withdrawn by CDCR and signed by the Attorney
17 representing CDCR. The State Personnel Board closed the case based on
18 the withdrawal.

19 CDCR withdrew their charges and dismissed the case against
20 Monroe at the "Settlement Conference". The ALJ mentions that a Skelly
21 hearing was held. At Skelly, the employee has an opportunity to tell his
22 side but may not call witnesses to prove his case. Skelly provides for a
23 hearing but leaves the decision to the Employing Head who simply
24 happens to be the person who charged the employee in the first instance.
25 Like Ms. Lopez. The minimum constitutional standard is Notice and

1 Opportunity to be heard and Opportunity to be heard includes ability to
2 call witness in one's defense.

3 For CDCR to say that Monroe retired in lieu of termination requires
4 that Monroe have had some say in denying or some conduct which shows
5 he has abandoned his right to be heard and call witnesses.

6 V

7 APPLICABLE CASE LAW

8 **Haywood** was terminated for cause **after** receiving his NOAA.

9 **Vandergoot** was terminated for cause **after** receiving his NOAA.

10 **Smith** was terminated for cause **after** receiving his NOAA.

11 **Martinez** received a NOAA but settled termination for cause and agreed
12 never to return to that employment.

13 **On July 19, 2013, MacFarland** was served with his NOAA while still
14 employed stating he would be terminated on July 26, 2013. MacFarland
15 filed his request for a hearing before the State Personnel Board but
16 withdrew his appeal before the hearing. The State Personnel Board
17 dismissed his appeal based upon MacFarland withdrawing his appeal.
18 Two days after **July 19, 2013, MacFarland** gave notice that he was retiring
19 effective **July 23, 2013**. The difference with MacFarland in our case is
20 that MacFarland, like the other cases, served with notice he was being
21 fired, before he retired. MacFarland filed his appeal but withdrew it.

22 Our employee Randy Monroe **was not** served with a NOAA until 40
23 days **after** he retired. Monroe's injury was service related. Monroe filed
24 his appeal was pursuing that appeal when the Department of Corrections
25

1 None of these cases step one iota into our circumstances or case and they
2 definitely do not mimic Haywood or its progeny.

3
4 **FINALITY**

5 **THIS CASE HAS NO RELATIONSHIP TO ANY OF THE PREVIOUS**
6 **CASES PRESENTED TO SHOW ANY CONNECTION TO OUR CASE.**

7 Each of the listed cases is based upon some charges that have either been
8 admitted, or a compromise was achieved, or the Employee walked away
9 from their right to fight the charges, or the Notice of Administrative Action
10 was served and not answered or objected to before the proper authorities.

11 In this case, there is **no NOAA in existence, IT HAS BEEN**
12 **DISMISSED AND WITHDRAWN.**

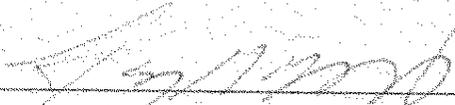
13 There are no charges and no violation of any conditions of employment.

14 All charges have been dismissed and withdrawn.

15 There does not exist any Retirement to escape disciplinary charges
16 because Monroe had not received any Notice of Adverse Action (NOAA) or
17 notice of pending disciplinary action before his retirement and upon his
18 receipt of an NOAA over a month after his retirement, pursued his rights
19 before the State Personnel Board to prove himself innocent or in the
20 alternative to cause the charging party, the Department of Corrections
21 and Rehabilitation to prove before the State Personnel Board that the
22 charges were valid and true.

23 The ALJ cannot review circumstances that no longer exist and make
24 a decision out of thin air. Air is all that is left after all claims have been
25 either debunked, or, dismissed and withdrawn.

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Larry Watkins - Attorney on behalf of RANDY MONROE

EXHIBIT A



Withdrawal of Action or Appeal

To: State Personnel Board
 Attn: Appeals Division
 801 Capitol Mall
 Sacramento, CA 95814
appeals@spb.ca.gov

Name Appellant Rand Monroe

Respondent California Department of Corrections and Rehabilitation

SPB Case No. 22-0387

Please check the appropriate box, date and sign:

I am the above-named Appellant, and hereby withdraw my appeal in the above-referenced matter.

Date _____ Signature _____

I am an authorized representative of the above-named Respondent. Respondent hereby rescinds the notice of adverse action, notice of rejection during probation, or notice of non-punitive termination that is the subject of the above-referenced appeal.

Date 5/24/22 Signature _____
 Title Attorney

EXHIBIT B



801 Capitol Mall Sacramento, CA 95814 | www.spb.ca.gov



Governor Gavin C. Newsom

Watkins & Associates - Attorney at Law
Attn: Larry Watkins
4788 Rawhide Street
Montclair, CA 91763

PROOF OF SERVICE BY FIRST CLASS MAIL

Re: **Appeal from Dismissal**
Randy Monroe; SPB Case No.: 22-0357

I, Paige Wittenbrook, declare:

I am over the age of 18 years and not a party to this action. I declare that I am employed by the California State Personnel Board, 801 Capitol Mall, Sacramento, California 95814.

CLOSURE LETTER

On May 24, 2022, I served the above document(s) on the addressee by placing the same for collection and mailing following our ordinary business practices. I am readily familiar with the State Personnel Board's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business, in the United States Postal Service in a sealed envelope with postage fully prepaid.

Appellant:
Randy Monroe

Appellant's Representative:
Watkins & Associates - Attorney at Law
Attn: Larry Watkins
4788 Rawhide Street
Montclair, CA 91763

Respondent:
Corrections and Rehabilitation
DAPO - Southern Region
Attn: ERO
21015 Pathfinder Road, Suite 200
Diamond Bar, CA 91765

Respondent's Representative:
Corrections/EAPT
Attn: Timothy Knight
Office of Legal Affairs
10111 Old Placerville Rd., Ste. 100
Sacramento, CA 95827

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on May 24, 2022, at Sacramento, California.

Paige Wittenbrook
Paige Wittenbrook
Appeals Division



601 Capitol Mall Sacramento, CA 95814 | www.spb.ca.gov

Governor Gavin C. Newsom

May 24, 2022

Re: **Randy Monroe**
SPB Case No. **22-0357**
Appeal from Dismissal filed on **04/07/22**

On May 24, 2022, the State Personnel Board closed the above-referenced appeal.

All pending hearings in this matter have been vacated for the following reason:

- Action withdrawn by department
- Appeal withdrawn by Appellant
- Other:

Sincerely,

Paige Wittenbrook

Paige Wittenbrook
Appeals Division

EXHIBIT C

Put your name and Social Security number or CalPERS ID at the top of every page.

RANDY N. MONAGH
Your Name

[Redacted] Social Security Number or CalPERS ID

EMPLOYER CERTIFICATION

Employer Certification

Pursuant to Government Code section 21156, a disability retirement must not be used as a substitute for the disciplinary process. I hereby certify (check all that apply):

- The member has an adverse action pending against him/her.
- The member was terminated for cause.
- The member resigned in lieu of termination.
- The member signed an agreement to waive his/her reinstatement rights (i.e., Employment Reinstatement Waiver).
- The member is being investigated for or has been convicted of a work-related felony.
- None of the above applies to this member.

Kissa Lewis
Signature of Employer Representative

02/01/2022
Date Certified True

Return To Work Coordinator
Title

